

POWER FUEL PRODUCERS, INC.
v.
ACTING ANADARKO AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS

IBIA 91-87-A

Decided August 16, 1991

Appeal from a denial of an application for a U.S. direct loan.

Affirmed.

1. Indians: Financial Matters: Financial Assistance

A Bureau of Indian Affairs decision denying a loan application under Title I of the Indian Financing Act, 25 U.S.C. §§ 1461-1469 (1988), will be summarily affirmed when it adequately explains the reason for denial and is supported by the administrative record, and when the appellant fails to show that the Bureau's discretion was not properly exercised.

APPEARANCES: Stanley Earles, vice-president, for appellant.,

OPINION BY ADMINISTRATIVE JUDGE VOGT

Appellant Power Fuel Producers, Inc., seeks review of a March 27, 1991, decision of the Acting Anadarko Area Director, Bureau of Indian Affairs (Area Director; BIA), denying an application for a U.S. direct loan in the amount of \$350,000, intended to finance the workover of three oil and gas wells and the drilling of two new wells.

Appellant's notice of appeal from the Area Director's decision was received by the Board on April 30, 1991. For the reasons discussed below, the Board summarily affirms that decision.

Discussion and Conclusions

Under Title I of the Indian Financing Act, 25 U.S.C. §§ 1461-1469 (1988), loans may be made to Indians from the Indian Revolving Loan Fund. 25 U.S.C. § 1463 (1988) provides: "Loans may be made only when, in the judgment of the Secretary, there is a reasonable prospect of repayment." Under this provision, BIA officials are vested with discretion to assess a

loan applicant's prospect of repaying the loan and to approve or disapprove an application based upon that assessment.

The Board's decisions in appeals from loan denials establish that (1) BIA's decision to approve or deny a loan is discretionary; (2) the Board will not substitute its judgment for BIA's; (3) the Board's role in such cases is to ensure that BIA gave consideration to all legal prerequisites to the exercise of discretion; and (4) where there is no procedural error, and the decision and/or administrative record show how BIA reached its conclusions, the BIA decision will be affirmed. See, e.g., Parisian v. Acting Billings Area Director, 19 IBIA 109 (1990); S & H Concrete Construction v. Acting Phoenix Area Director, 19 IBIA 69 (1990); Gauthier v. Portland Area Director, 18 IBIA 303 (1990).

The Area Director's decision in this case appeared to contain a thorough statement of the reasons for denial of appellant's loan application. In light of the principles noted in the preceding paragraph, the Board determined that this appeal might be appropriate for summary disposition. By Board order of May 1, 1991, appellant was given an opportunity to show cause why the Area Director's decision should not be summarily affirmed. To assist appellant in preparing its response, the Board furnished it with copies of the Board decisions cited above, as well as copies of documents in the administrative record which appellant did not already have.

Appellant's response discusses the merits of the Area Director's decision and expresses disagreement with the Area Director's analysis of its application. Appellant also indicates that its financial condition has recently improved because of agreements it has negotiated with its creditors to forgive debts in the amount of \$39,410.93. Appellant does not, however, make any allegations of error which are reviewable by the Board under its limited jurisdiction in this case. When a decision on appeal to the Board involves the exercise of discretion, the appellant bears the burden of proving that BIA's discretion was not properly exercised. Gauthier v. Portland Area Director, 18 IBIA at 306. Appellant has not borne that burden here.

The administrative record shows that BIA gave appellant's loan application thorough consideration. The Board finds that the record supports the Area Director's decision.

[1] When a BIA decision denying a loan application adequately explains the reason for denial, the decision is supported by the administrative record, and the appellant makes no showing that BIA's discretion was not properly exercised, the BIA decision will be summarily affirmed.

A copy of the Area Director's decision is attached hereto. Pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of

the Interior, 43 CFR 4.1, this appeal is docketed and the Area Director's decision is affirmed.

Anita Vogt
Administrative Judge

I concur:

Kathryn A. Lynn
Chief Administrative Judge

United States Department of the Interior
Bureau of Indian Affairs
Anadarko Area Office
P.O. Box 368
Anadarko, Oklahoma 73005

MAR 27 1991

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Stanley D. Earles, Vice President
Power Fuel Producers, Inc.

Dear Mr. Earles:

Your request for a U. S. Direct Loan of \$350,000 for the workover and drilling of oil and gas wells has been carefully considered. We regret to inform you that we are unable to approve this request.

The primary reasons that we must withhold our approval of your application are as follows:

1. The company has experienced declining revenue for the past three years from \$119,000 to \$78,000.
2. The company has experienced continuous years of losses from operations, with cumulative losses of \$81,000 during the past three years.
3. The company is experiencing a steady decline in productive assets from \$111,000 to \$73,000 over a three year period.
4. The company has reached a state of insolvency and the financial condition continues to deteriorate to a present status whereby total liabilities exceed total assets by over \$27,000.
5. There is insufficient capital being contributed to the proposed project. Although the application indicates capital contribution of \$155,000, the majority of this stated capital contribution is in the form of future contributions to be made after the loan and based on the assumption that revenues will increase substantially as a result of the loan. The total capital expenditures of \$505,120 consists of the loan of \$350,000 plus future contributions for the remainder. None of this stated capital currently exists to qualify as available capital to be contributed.

6. There is insufficient collateral to adequately secure the requested loan. The stated future collateral of \$1.1 million is based on new equipment and reserves which are presently nonexistent, and the potential creation of these assets in the future as collateral is speculative in nature. The present stated collateral of \$300,000 appears to be overstated on the basis of comparison to fixed assets which were sold by the company during 1989 at approximately 80 percent of book value. Based on the present book value of fixed equipment of \$57,000, the estimated equipment value is \$46,000 which appears to be a reasonable estimate of security for the loan, and is considered inadequate. We must discount the existing reserves as collateral since your company has been unable to attract potential investors with its current reserves, current production has been unprofitable for the past three years, and any potential purchaser of these reserves would have to consider operating expenses in order to generate production.

7. There is a high degree of risk for the generation of income and profits in the future, and the basis of the projected increase in income and profits is speculative in nature.

8. There does not exist reasonable prospects for repayment of the loan as required before a loan may be approved.

This decision may be appealed to the Interior Board of Indian Appeals, 4015 Wilson Boulevard, Arlington, Virginia 22203, in accordance with the regulations in 43 CFR 4.310-4.340. Your notice of appeal to the Board must be signed by you or your attorney and must be mailed within 30 days of the date you receive this decision. It should clearly identify the decision being appealed. If possible, attach a copy of the decision.

You must send copies of your notice of appeal to (1) the Assistant Secretary - Indian Affairs, 4110 MIB, U.S. Department of the Interior, 18th and C Streets, NW, Washington, D.C. 20240, (2) each interested party known to you, and (3) this office. Your notice of appeal sent to the Board of Indian Appeals must certify that you have sent copies to these parties. If you are not represented by an attorney, you may request assistance from this office in the preparation of your appeal. If you file a notice of appeal, the Board of Indian Appeals will notify you for further appeal procedures.

If no appeal is timely filed, this decision will become final for the Department of the Interior at the expiration of the appeal period. No extension of time may be granted for filing a notice of appeal.

Sincerely,
Joe B. Walker
Acting Area Director